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BEFORE THE ARIZONA POWER PLANT AND
TRANSMISSION LINE SITING COMMITTEE

AZ CORP COMMISSION
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IN THE MATTER OF THE)
APPLICATION OF ALLEGHENY)
ENERGY SUPPLY COMPANY, L.L.C.,)
FOR A CERTIFICATE OF)
ENVIRONMENTAL COMPATIBILITY)
FOR CONSTRUCTION OF A 1,080)
MW (NOMINAL) GENERATING)
FACILITY IN SECTION 35,)
TOWNSHIP 3 NORTH, RANGE 11)
WEST IN LA PAZ COUNTY,)
ARIZONA AND AN ASSOCIATED)
TRANSMISSION LINE AND)
SWITCHYARDS BETWEEN AND IN)
SECTION 35, TOWNSHIP 3 NORTH,)
RANGE 11 WEST ALSO IN LA PAZ)
COUNTY, ARIZONA)

Docket No. L-00000AA-01-0116

Case No. 116

**AZURE'S RESPONSE TO MOTION
TO STRIKE**

Arizona Corporation Commission

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AZURE files this response to the November 1, 2001 motion by Allegheny Energy Supply Company, L.L.C. ("Allegheny") to strike the pre-filed testimony of Phyllis Fox, Camille Sears, Steven Radis, Scott Terrill, and Ken Schmidt. The Committee, through its Chair, should deny the motion on grounds that: (1) the testimony relates directly to matters that, by statute, fall squarely within the Committee's jurisdiction and authority; (2) no provision of A.R.S. § 40-360, *et seq.* ("siting statute") precludes the Committee from receiving and considering AZURE's testimony, or from imposing reasonable conditions to assure adequate protection of air and water quality; and (3) AZURE's testimony addresses the *same* matters raised by Allegheny in its own pre-filed testimony, oral testimony, and Certificate of Environmental Compatibility ("CEC") application materials. AZURE also urges the Committee not to be distracted from the hard facts about the La Paz Generating Facility ("project") by Allegheny's eleventh-hour attack on AZURE's motives. AZURE's response to the motion follows.

1 **I. BACKGROUND**

2 **A. Information And Testimony Filed By Allegheny To Date**

3 When Allegheny submitted its CEC application in July of this year, it made several factual
4 assertions regarding the project's impacts on Arizona's environment, including its air, water, and
5 biological resources. In particular, Allegheny pledged to limit the project's emissions of NOx, CO,
6 ammonia, VOCs, and hazardous air pollutants to the numeric levels specified in its application.
7 Allegheny claimed that these limits constituted the Best Available Control Technology ("BACT")
8 for limiting emissions of these pollutants, and that the project would accordingly comply with all
9 applicable federal and state air quality laws. Allegheny also claimed in its application that the
10 project's emissions would not exceed applicable visibility impact screening criteria; that the
11 project's evaporation ponds would not adversely impact biological resources in the area; and that the
12 project's wet-cooling system would not adversely impact groundwater resources or other
13 groundwater users in the area.

14 The following month, Allegheny submitted pre-filed written testimony from several
15 witnesses supporting the project. These witnesses repeated these same factual assertions about the
16 project. One of them, Mr. Simpson, testified specifically that the air pollution limits Allegheny was
17 proposing constituted BACT for the project. Although these witnesses testified orally at the public
18 hearing in Parker on September 4, 2001, time constraints prevented AZURE or any other party from
19 cross-examining them.

20 **B. AZURE's Review Of Allegheny's Information And Evidence And Submission Of**
21 **Expert Testimony**

22 AZURE consulted with experts Fox, Sears, Radis, Terrill, and Schmidt to assist in
23 determining whether Allegheny's witnesses were testifying accurately, and whether the project's
24 environmental impacts were as benign as Allegheny claimed. After reviewing Allegheny's CEC
25 application and testimony, AZURE's experts concluded that many of Allegheny's factual assertions
26 were predicated on improper assumptions, faulty technical analyses, and/or misstatements of
applicable standards, and therefore were largely erroneous. Having previously sought and obtained
full party status in this proceeding, AZURE subsequently prepared and submitted pre-filed testimony
from these experts in order to respond to inaccurate or misleading statements presented by
Allegheny in its own testimony.

1 For the benefit of the Chair and Committee, AZURE has prepared a table demonstrating that
2 virtually all of the AZURE testimony that Allegheny seeks to strike directly addresses matters
3 previously testified to by Allegheny or provided in its CEC application. This table is appended
4 hereto as Exhibit A.

5 **C. Allegheny's Motion To Strike AZURE's Expert Testimony**

6 Now, just days before the Committee reconvenes hearings, and apparently fearful that it has
7 no response on the merits, Allegheny files a lengthy motion seeking a truly extraordinary remedy:
8 striking virtually all of AZURE's expert testimony, and the permanent elimination of the
9 Committee's – and the Commission's – ability and right to hear relevant testimony about the La Paz
10 project's environmental impacts.¹ Allegheny's equally extraordinary legal theory in support of the
11 motion is that the testimony is "immaterial, beyond the scope of this proceeding, and outside the
12 jurisdiction of this Committee." (Motion at 1:13-14.) Allegheny apparently views the Committee as
13 a regulatory rubber stamp, lacking any authority or interest of its own to impose conditions to protect
14 air and water quality. Instead, Allegheny claims the Committee must defer obediently to the
15 judgment of other agencies, leaving the task of assuring adequate protection of air and water
16 resources exclusively to other governmental authorities. Because the Committee lacks the power to
17 impose conditions of its own, Allegheny concludes it therefore lacks the authority even to *hear*
18 evidence concerning the project's impacts on air and water resources.

19 AZURE does not share Allegheny's view. The Legislature endowed this Committee with the
20 unique authority, shared by no other agency, to view proposed power plant projects in light of their
21 impacts on the "total environment" – air, water, biological resources, and human health. Exercising
22 this authority, the Committee has in the past imposed and should again impose reasonable conditions
23 on power plant operations to ensure maximum feasible protection of the state's environment and
24 limited stock of natural resources, including its air and water resources. The Committee cannot
25 meaningfully achieve the mission given by the Legislature if it is prevented from hearing the facts
26 about a project.

24 ¹ Arizona cases establish that motions to strike, which prevent a deliberative entity from
25 deciding a contested issue on its merits, are disfavored. *See, e.g., Wohlstrom v. Buchanan*, 180 Ariz.
26 389, 394, 884 P.2d 687, 692 (1994); *Goodman v. Cushman*, 92 Ariz. 276, 277, 376 P.2d 394, 395
(1962).

1 For these reasons, and for the additional reasons that follow, the Chair should deny the
2 motion to strike and allow AZURE's witnesses to testify regarding the scope and extent of the La
3 Paz project's impacts on the "total environment," including air and water quality.

4 **II. THE COMMITTEE HAS THE AUTHORITY TO ACCEPT AND CONSIDER THE**
5 **EVIDENCE FROM AZURE'S WITNESSES, AND TO IMPOSE THE CONDITIONS**
6 **THEY RECOMMEND**

7 Allegheny claims the testimony of the AZURE witnesses is "immaterial, beyond the scope of
8 this line [sic] siting proceeding and outside the jurisdiction of the Line Siting Committee." (Motion
9 at 1:13-14.) Since AZURE's testimony obviously relates directly to the environmental impacts of the
10 project, Allegheny resorts to a novel legal theory that was bankrupt at its conception. According to
11 Allegheny, the Committee lacks the authority even to hear evidence regarding a project's impacts on
12 air and water quality, and/or its non-compliance with applicable air and water quality standards,
13 because the project will be required to comply with conditions in permits issued by other pollution-
14 control agencies with primary jurisdiction over these resources. (Motion at 1:19-2:9.) Allegheny's
15 sole support for this theory is its repeated citation to A.R.S. § 40-360.06(C), which provides that the
16 Committee "shall not require compliance with performance standards other than those established by
17 the agency having primary jurisdiction over a particular pollution source."

18 As discussed below, Allegheny's interpretation of the siting statute not only conflicts with
19 the plain language of the siting statute, it flies in the face of the Committee's and the Commission's
20 past practices in other siting cases, where air and water pollution control issues were considered, and
21 appropriate conditions imposed.

22 **A. AZURE's Testimony Relates Directly To The Factors The Committee Must**
23 **Consider In This Proceeding**

24 By focusing solely on A.R.S. § 40-360.06(C), Allegheny ignores the list of factors contained
25 in A.R.S. § 40-360.06(A) that the Committee must consider as the basis for its action to approve or
26 deny a siting application. Among these factors are the following:

"2. Fish, wildlife and plant life and associated forms of life upon which they are dependent.

☐

"6. The total environment of the area.

☐

"9. Any additional factors which require consideration under applicable federal and state
laws pertaining to any such site."

1 As discussed below, all of the pre-filed witness testimony Allegheny seeks to strike directly
2 addresses one or more of the foregoing factors.

3 1. Phyllis Fox

4 Dr. Fox's testimony addresses the impacts of air pollutant emissions from the La Paz project
5 on air quality and human health in the area. It also rebuts Allegheny's own testimony and statements
6 of fact regarding the project's purported compliance with applicable federal and state air quality
7 standards. It also criticizes the air quality impact analyses undertaken by Allegheny to support its
8 claims regarding the nature and extent of the project's impacts on air quality. It therefore relates
9 directly and materially not only to "the total environment of the area" (A.R.S. § 40-360.06(A)(6)),
10 but also to "factors which require consideration under applicable federal and state laws pertaining to
11 [the power plant] site" (A.R.S. § 40-360.06(A)(9)). Thus, the siting statute not only allows, but
12 affirmatively requires the Committee to accept and consider Dr. Fox's testimony.

13 2. Camille Sears

14 Ms. Sears' testimony also addresses the impacts of the project's air pollutant emissions,
15 including hazardous air pollutant emissions, on air quality and human health in the area. It similarly
16 rebuts Allegheny's own testimony and factual statements, and critically evaluates the analyses
17 Allegheny relied on to support its claims regarding compliance with applicable federal and state
18 standards. It therefore also relates directly and materially not only to "the total environment of the
19 area" (A.R.S. § 40-360.06(A)(6)), but also to "factors which require consideration under applicable
20 federal and state laws pertaining to [the power plant] site" (A.R.S. § 40-360.06(A)(9)). Thus, the
21 siting statute requires the Committee to accept and consider Ms. Sears' testimony in the same
22 manner as Dr. Fox's testimony.

23 3. Steven Radis

24 Mr. Radis' testimony focuses on impacts of the project's air pollutant emissions on visibility,
25 as well as on the risks associated with the transport, storage, and use of ammonia. For the same
26 reasons noted above, Mr. Radis' testimony relates directly and materially not only to "the total
environment of the area," but also to "factors which require consideration under applicable federal
and state laws pertaining to [the power plant] site." The Committee should therefore accept and
consider it as well.

4. Scott Terrill

1 Here, it appears that Allegheny has not actually read Dr. Terrill's testimony. Allegheny
2 argues that it "raises water quality issues surrounding the La Paz facility's evaporation ponds."
3 (Motion at 2:4-5.) Dr. Terrill's testimony actually focuses on the impacts of those ponds on birds
4 and wildlife who may be exposed to contaminants in the cooling tower blowdown discharged into
5 the ponds. Not only are these impacts squarely within the Committee's purview under A.R.S. § 40-
6 360.06(A)(6) ("the total environment of the area"), but under A.R.S. § 40-360.06(A)(2) ("fish,
7 wildlife and plant life") as well. Furthermore, the aquifer protection permit process does not by
8 itself impose "water pollution control standards" that assure protection of birds and wildlife from the
9 exposure risks testified to by Dr. Terrill. Again, the Committee not only may, but is affirmatively
10 required to accept and consider Dr. Terrill's testimony in this proceeding.

11 5. Ken Schmidt

12 While Dr. Schmidt's testimony relates first and foremost to the project's impacts on
13 groundwater supply, it also addresses the potential impacts from the project's extraction and use of
14 groundwater containing pollutant concentrations exceeding maximum contaminant levels for
15 drinking water. It also raises the issue of impacts on groundwater quality from operation of the
16 evaporation ponds. Much of Dr. Schmidt's testimony rebuts Allegheny's own testimony regarding
17 the project's purported compliance with applicable federal and state water pollution and aquifer
18 protection standards, and critiques Allegheny's analyses in support of its claims that project-related
19 groundwater pumping will have no negative impact on the underlying aquifer. It therefore relates
20 directly and materially not only to "the total environment of the area," but also to "factors which
21 require consideration under applicable federal and state laws pertaining to [the power plant] site."
22 Once again, the Committee not only may, but is required to accept and consider this testimony.

23 **B. AZURE's Testimony Relates Directly To Factors The Commission Must
24 Consider In Reviewing The Committee's Recommendation**

25 In addition to the factors enumerated in A.R.S. § 40-360.06(A), a separate section of the
26 siting statute providing for the Commission's review of a Committee siting decision also establishes
the relevance and materiality of AZURE's witness testimony to this proceeding. A.R.S. § 40-
360.07(B) provides:

"In arriving at its decision, the Commission shall comply with the provisions of section 40-
360.06 and shall balance, in the broad public interest, the need for an adequate economical

1 and reliable supply of electric power with the desire to minimize the effect thereof on the
2 environment and ecology of this state.”

3 This section also provides that the Commission’s review of a Committee decision “shall be
4 conducted on the basis of the record” of the Committee’s proceedings. (*Id.*) Thus, any party’s
5 evidence that relates to the “effect” of a project on the “environment and ecology of this state” must
6 necessarily be accepted and considered by the Committee in the first instance. Only then can the
7 Commission meaningfully balance the need for electric power with a project’s environmental and
8 ecological impacts as required by A.R.S. § 40-360.07(B).

9 **C. AZURE’s Testimony Relates Directly To The Accuracy Of Information That**
10 **Must Be Submitted In Any CEC Application**

11 Finally, Allegheny has ignored A.A.C. R14-3-219, which establishes beyond all doubt the
12 relevance of the air and water pollution information presented by Allegheny and rebutted by
13 AZURE’s expert witnesses. A.A.C. R14-3-219 (Exhibit B) requires CEC applicants to: “Attach any
14 environmental studies which applicant has made or obtained in connection with the proposed site(s)
15 or route(s)....” By imposing this requirement, the Commission obviously intended the Committee to
16 consider such information in reaching its decision. By necessary extension, the Commission
17 intended the Committee to allow other parties to siting proceedings to present information of their
18 own to contradict or clarify the applicant’s information. That is precisely what occurred in this
19 proceeding. As discussed above, AZURE’s witness testimony addresses the factual assertions
20 presented in the environmental studies attached to Allegheny’s CEC application, in addition to its
21 own pre-filed testimony.

22 In conclusion, AZURE’s expert witness testimony relates full square to matters the siting
23 statute has unambiguously placed within the Committee’s jurisdiction and authority.

24 **III. A.R.S. § 40-360.06(C) DOES NOT LIMIT THE COMMITTEE’S AUTHORITY TO**
25 **RECEIVE AND CONSIDER AZURE’S EXPERT TESTIMONY, OR TO IMPOSE**
26 **REASONABLE CONDITIONS RECOMMENDED THEREIN**

As discussed, Allegheny apparently views section 40-360.6(C) as depriving the Committee
of any and all authority to impose conditions to protect air and/or water quality, and of the ability
even to hear and consider evidence relating to a project’s air and water quality impacts. AZURE
does not share Allegheny’s view of the Committee as a toothless regulatory body. AZURE believes
the Legislature charged the Committee with the obligation to look at proposed power plants broadly,

1 and to ensure that only those projects which are genuinely compatible with the state's goals of
2 environmental and natural resource conservation are built and operated in Arizona. (A.R.S. § 40-
3 360.06(A).) Thus, while the Committee may not require compliance with pollution control
4 performance standards that conflict with those established by the agencies with primary jurisdiction
5 over a particular pollution source, it may nonetheless impose conditions that specify or clarify what
6 those standards are, and require that they be satisfied in a particular manner. This follows
7 necessarily from the Committee's status as the *sole* regulatory entity that has a duty to consider "the
8 total environment" of the area in reviewing an application, rather than limiting its review to air
9 quality, water quality, or another discrete resource category.

10 Allegheny has perhaps confused the concept of "primary" jurisdiction with "exclusive" or
11 "pre-emptive" jurisdiction. While the Committee cannot impose pollution control performance
12 standards of its own that conflict with those established by the agency with primary jurisdiction, it
13 may of course impose other conditions that supplement or complement those standards. For
14 examples, the Committee need look no further than recent past CEC orders, summarized below,
15 where the Committee itself and/or the Commission imposed precisely this sort of supplemental
16 condition.

17 **A. The Commission And Committee Have Specified Quantitative BACT Standards**
18 **In Recent Cases**

19 In February of this year, the Committee approved a CEC for Gila Bend Power Partners' 845
20 MW Gila Bend Power Plant (Decision No. 63552). The Gila Bend CEC included the following
21 condition:

22 "8. Applicant shall operate its project so as to meet a 2.5 ppm NOx emission level, within
23 the parameters established in the Title V and PSD air quality permit issued by Maricopa
24 County for the plant."

25 The CEC with this condition was affirmed by the Commission on April 18, 2001. Notably, the
26 Commission added the following condition to the CEC on its own initiative:

"Applicant shall install and operate catalytic reduction oxidation technology that will
produce a carbon monoxide emission rate equivalent to California BACT and similar
collateral reductions for Volatile Organic Compounds (VOCs) and condensable particulate
matter."

1 Furthermore, this Committee just two weeks ago granted a CEC for the Duke Arlington II project
2 that contained a condition specifying a numeric NOx emission limit.²

3 These examples illustrate that both the Commission and Committee have imposed conditions
4 specifying compliance with a particular numeric air quality standard, and have mandated use of
5 particular pollution control technologies, even though these matters are ostensibly within the
6 "primary jurisdiction" of other agencies. The Commission and Committee necessarily based their
7 decisions to do so upon evidence presented by parties during siting proceedings. AZURE submits
8 that its proposed conditions for limiting air pollutant emissions from the La Paz project are no
9 different in nature than those imposed by the Commission and Committee in earlier proceedings.³
10 Therefore, the testimony of Dr. Fox, Ms. Sears, and Mr. Radis is necessary and relevant to the
11 Committee's consideration not only of AZURE's proposed conditions, but of Allegheny's *own*
12 proposed emission limits as well. This is discussed below.

13 **B. Allegheny Has Itself Proposed A Specific Air Pollution Control Standard As A**
14 **Condition Of Its CEC**

15 On October 30, 2001, just two days before Allegheny filed its Motion to Strike, Allegheny
16 presented AZURE with a revised set of proposed conditions that it had submitted to the Committee.
17 Included among Allegheny's revisions was the following:

18 "The Applicant shall operate the Project so as to meet a 2.5 ppm NOx emissions level, within
19 the parameters established in the Title V and PSD air quality permits issued by ADEQ.
20 Applicant shall install and operate catalytic oxidation technology that will produce carbon
21 monoxide ("CO") and volatile organic compound ("VOC") emissions rates determined as
22 current best available control technology ("BACT") by ADEQ." (Allegheny Revised
23 Condition 1.b; emphasis added.)⁴

24 ² AZURE is informed that this limit is 2.5 ppm. Because the CEC has not yet been signed,
25 AZURE was unable to obtain a copy prior to filing this response.

26 ³ As explained by Dr. Fox, BACT represents a continually evolving pollution limit that is
based on what is achieved at similar facilities elsewhere in the country. BACT can literally change
overnight as a result of a demonstration that an identical power plant with identical control
technologies is capable of achieving lower emissions levels than previously thought. Thus, while
BACT for NOx may have been 2.5 ppm averaged over one hour at one time, that number could be,
and in fact has been, lowered to at least 2.0 as a result of its being demonstrated in practice
elsewhere. This is the essence of Dr. Fox's testimony.

⁴ Allegheny has indicated that its revised conditions reflect conditions included in the recently
issued Duke II CEC.

1 Allegheny itself has asked the Committee to impose a *specific numeric limit* on the project's
2 emissions of NOx. This is *not* the same as merely "referenc[ing] air standards as determined by the
3 governing agency," which "illustrates that the Committee does not have the authority to establish
4 pollution control standards of its own." (Motion at 4, fn. 2.) By requesting the Committee to impose
5 its preferred emissions limit for NOx, Allegheny has acknowledged that the Committee has the
6 authority to impose a specific emissions limit in a CEC condition. This acknowledgement of course
7 undermines the entire premise supporting Allegheny's motion to strike, namely that the Committee
8 lacks the authority to impose this type of condition. This point alone should prompt the Committee to
9 reject the motion out of hand.

10 **C. Construction-Related Dust Emissions and Evaporation Pond Impacts On Birds
11 And Wildlife Are Outside ADEQ's Regulatory Purview**

12 Even if the Committee accepted Allegheny's invitation to divest itself of its regulatory
13 powers, Dr. Fox's testimony regarding construction-related air quality impacts and Dr. Terrill's
14 testimony regarding impacts to birds and wildlife from the project's evaporation ponds would still be
15 relevant and material. This is because neither category of impact is addressed or regulated by
16 ADEQ either in its air or aquifer protection permitting processes, contrary to Allegheny's assertions.
17 First, Allegheny's Class I Air Permit will limit emissions during project operations only, not during
18 project construction.⁵ Furthermore, while the APP process may address groundwater quality
19 concerns related to a spill or leak of cooling tower blowdown from the ponds, it most certainly will
20 not address impacts to birds and wildlife who may come into contact with the ponds. Therefore, Dr.
21 Terrill's testimony regarding the nature and extent of those impacts remains relevant and material to
22 the Committee's consideration of the CEC application in this proceeding.

23 **IV. AZURE'S EXPERT TESTIMONY REBUTS ALLEGHENY'S OWN TESTIMONY
24 AND IS THEREFORE RELEVANT AND MATERIAL**

25 The foregoing establishes that AZURE's expert testimony is material and relevant to the
26 Committee's consideration of Allegheny's application as a matter of law, and is therefore
admissible. The Committee should remain mindful that Allegheny itself has submitted its own
testimony regarding the very same environmental impacts of its project; its own testimony regarding

⁵ See A.A.C. R14-2-301, *et seq.*; *c.f.* A.A.C. R14-2-601, *et seq.*

1 what constitutes BACT; and its own testimony regarding the compliance with other applicable
2 federal and state environmental laws. AZURE's witness testimony therefore rebuts evidence on
3 issues *already raised* by Allegheny. Allegheny has, in other words, already opened the door to
4 evidence on these topics. Its attempt to slam the door in AZURE's face just days before hearings
5 resume, and to prevent the Committee from hearing contrary evidence *on the very same subject*
6 *matters*, frankly stretches the bounds of propriety under the circumstances. AZURE wonders why
7 Allegheny is so afraid of the Committee's hearing contradictory evidence.

8 Accordingly, even if the Committee questions its own authority to receive and consider
9 AZURE's expert testimony, it should still deny the motion to strike on grounds that Allegheny has
10 already itself placed these issues before the Committee.

11 **V. WHO ARE THE UNIONS AND WHY ARE THEY INVOLVED IN THIS CASE?**

12 Finally, AZURE wishes to respond to Allegheny's statements regarding AZURE's motives
13 for participating in this proceeding, raised as a post-script to its motion to strike. In so responding,
14 AZURE does not concede the relevance, appropriateness, or the good faith of Allegheny's
15 statements.

16 First, Allegheny insinuates that AZURE has sinister motives that somehow limit the
17 Committee's statutory jurisdiction. This idea is nonsensical. The Committee's jurisdiction is based
18 on Arizona *law*, not the motives of any particular intervenor. Second, Allegheny attempts to slur
19 AZURE because it is modeled after CURE, a coalition of California labor unions that promotes both
20 environmental and labor goals in power plant siting proceedings. AZURE is *proud* to be modeled
21 after CURE. In fact, AZURE hopes its participation here will generate some of the many
22 environmental benefits achieved as a result of CURE's work – less air pollution, preservation of
23 scarce fresh water resources, increased plant safety and reliable electric supply. These, after all, are
24 the goals of the Committee here as well.

1 AZURE will pursue its labor-related goals *outside* this proceeding. AZURE's position is,
2 and has always been, that of the Committee Chair as articulated during the September 4, 2001
3 hearing in Parker: that labor issues and/or labor contracts are outside the scope of this proceeding.⁵

4 **A. This Committee's Jurisdiction Comes From the Statutes, And Is Not Limited By
The Motives Of A Particular Intervenor**

5 While AZURE is unabashedly proud of its goals, they do not determine this Committee's
6 jurisdiction. This Committee's jurisdiction to consider an environmental issue is not limited by *who*
7 or *why* an issue is presented to the Committee. Whether the issue is raised by the Sierra Club, a
8 competitor of the Applicant, a labor union or the Applicant itself, is irrelevant. If an applicant's
9 competitor, motivated only by economic interest, informs the Committee that a project would
10 destroy the last of an endangered species, is the Committee powerless to prevent this outcome? Of
course not. The Committee's jurisdiction is determined by one thing alone: Arizona statutes.

11 **B. AZURE's Environmental Protection Goals Benefit Construction Workers**

12 Construction work, by its nature, is temporary. After a project is built, a construction worker
13 is laid off. The long-term interest of a construction worker depends on development being
14 environmentally sustainable. As AZURE stated in its Notice of Intent to Become a Party,
15 environmental degradation jeopardizes future growth and jobs by causing construction moratoriums,
16 depleting limited air pollutant emissions offsets, consuming limited fresh water resources, and
17 imposing other stresses on the environmental carrying capacity of the state. This in turn reduces
18 future employment opportunities for the members of AZURE's unions. These members also live
19 and work in the communities and regions that suffer the impacts of projects that are detrimental to
20 human health and the environment. These members therefore have an important stake in the
environment – as important as any other intervenor in Committee proceedings. It is these interests
that AZURE seeks to promote in this proceeding.⁶

21 **C. CURE Has Obtained Substantial Environmental Benefits For Its Members In
22 California; AZURE Seeks The Same In Arizona**

23 ⁵ 9/4/01 Transcript of Proceedings before the Arizona Power Plant and Transmission Line
Siting Committee at p.57 l.24 - p.58 l.2. (Chr. Woodall, noting the irrelevance of labor issues to the
24 Committee's consideration of environmental factors).

25 ⁶ Of course, construction labor unions also have an interest in labor contracts. But AZURE did
26 not, and will not, raise those interests in this proceeding. Unlike the Applicant, AZURE believes
they are simply not relevant to any issue within the Commission's jurisdiction.

1 Allegheny correctly states that AZURE is modeled after the California Unions for Reliable
2 Energy ("CURE"). Although not affiliated with CURE, AZURE seeks many of the same
3 environmental protections as the California unions. Allegheny quotes from a newsletter of one of
4 the CURE participant unions. That newsletter clearly identifies both of CURE's interests –
5 environmental and labor. As stated in the newsletter, but only *partially* quoted in the Applicant's
6 motion,

7 "The new [power] plants also would have such substantial environmental impacts that
8 developments by union friendly industries would be impeded. Emissions offsets
9 would be consumed and water supplies would be depleted. CURE dedicated itself to
10 a statewide mission to prevent that from happening.

11 ***"CURE also made a landmark environmental agreement with Calpine in which
12 Calpine agreed to the lowest NOx emission rate of any plant in the United States
13 and agreed to eliminate all water resource impacts by using dry air cooled
14 condensers rather than wet cooling."*** [Emphasis added.]

15 Since that newsletter was written, CURE entered environmental settlements with several
16 other developers. These plants will have even lower emissions of NOx and many other pollutants
17 including carcinogens from both construction and operation, innovative wet/dry cooling systems and
18 safer ammonia handling. This will help protect California's environment and sustain economic
19 development in California.⁷ AZURE therefore gladly accepts the comparison to CURE and its
20 standards of environmental protection. AZURE would be pleased if this Committee required
21 Allegheny to do for Arizona's environment what CURE has obtained for California's. Arizona
22 deserves nothing less.

23 VI. CONCLUSION

24 For the foregoing reasons, AZURE respectfully requests the Chair to deny Allegheny's
25 Motion to Strike the pre-filed written testimony of AZURE expert witnesses Phyllis Fox, Camille
26 Sears, Steven Radis, Scott Terrill, and Ken Schmidt.

RESPECTFULLY SUBMITTED this 8 day of November, 2001.

⁷ If the Committee desires, AZURE would be happy to provide the Committee with these settlements.

Very truly yours,

MORRISON & HECKER, L.L.P.

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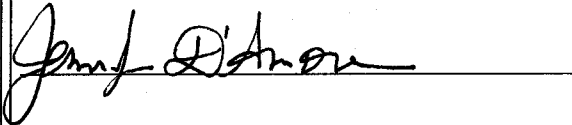
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EXHIBIT A

Allegheny's Own Testimony And Evidence On Topics For Which It Moves To Strike AZURE's Testimony

AZURE Witness	Subject Of Testimony	Allegheny's Own Testimony/Evidence On Same Topic
Fox	BACT for NO _x	<ul style="list-style-type: none"> • CTG/HRSG will meet BACT for NO_x, which is 2.5 ppmvd. (Application at B-1-1; B-1-4; B-1-6 to B-1-11; Simpson Testimony at 12-14.) • Auxiliary boiler will meet BACT for NO_x, which is .1 lb./MMBtu. (<i>Id.</i>)
	Ammonia slip	<ul style="list-style-type: none"> • CTG/HRSG will meet BACT for ammonia, which is 10 ppmvd. (Application at B-1-1; B-1-8 to B-1-11.)
	CO emissions	<ul style="list-style-type: none"> • CTG/HRSG will meet BACT for CO, which is 5 ppmvd. (Application at B-1-1; B-1-11 to B-1-14.) • Auxiliary boiler will meet BACT for CO, which is .1 lb./MMBtu. (Application at B-1-24 to B-1-25.) • CO emissions will be 881 tpy. (Application at B-1-28 to B-1-32.) • CO impacts are below applicable thresholds. (Application at B-1-32 to B-1-71; Simpson Testimony at 13-14, 17.)
	VOCs	<ul style="list-style-type: none"> • CTG/HRSG will meet BACT for VOCs, which is 2.9 ppmvd. (Application at B-1-18 to B-1-21.) • Auxiliary boiler will meet BACT for VOCs, which is .015 lb./MMBtu. (Application at B-1-27.) • VOC emissions will be 202 tpy. (Application at B-1-28 to B-1-32.) • VOC impacts are below applicable thresholds. (Application at B-1-32 to B-1-71; Simpson 13-14, 17.)
	HAPs	<ul style="list-style-type: none"> • No individual HAP total is above 10 tpy. (Application at B-1-1; B-1-36 to B1-39.) • HAP impacts are below applicable AAAQC levels. (Application at B-1-43, B-1-55 and B-1-60; Simpson Testimony at 14, 17.)

AZURE Witness	Subject Of Testimony	Allegheny's Own Testimony/Evidence On Same Topic
Fox (cont'd)	Other air quality and pollution control standards within ADEQ's purview	<ul style="list-style-type: none"> • Generally, project complies with applicable federal and state standards. (Application at B-1-1 to B-1-71; Simpson Testimony at 13-14, 17.)
Sears	HAPs	<ul style="list-style-type: none"> • No individual HAP total is above 10 tpy. (Application at B-1-1; B-1-36 to B1-39.) • HAP impacts are below applicable AAAQC levels. (Application at B-1-43, B-1-55 and B-1-60; Simpson Testimony at 14, 17.)
	Construction air quality impacts	<ul style="list-style-type: none"> • Construction will not result in adverse air quality impacts. (Simpson Testimony at 14, 18.) • The summary of relevant air quality impacts and thresholds does not include construction exhaust or construction fugitive dust as a source of PM10, implying that these are not potential sources of air quality impacts. (Application at B-1-59.)
Radis	Visibility Impacts	<ul style="list-style-type: none"> • Project will not exceed Delta-E and Contrast screening criteria and will not result in adverse impacts on visual resources. (Application at B-1-58 to B-1-71; Simpson Testimony at 9-10, 13, 17.)
	Ammonia transportation risk	<ul style="list-style-type: none"> • Project will result in minimal or negligible environmental effects. (Simpson Testimony at 18.) • Ammonia is to be stored in two 12,000 gallon tanks surrounded by containment dikes sufficient to contain 15% of the volume. (Allegheny response to AZURE Data Request 37.)
Terrill	Impacts on birds from water quality of evaporation ponds	<ul style="list-style-type: none"> • Project would not result in adverse impacts on biological wealth. (Application at C-5; Simpson Testimony at 6-7, 17.) • Selenium is contained in groundwater used for project. (Application at B-3-15.)

AZURE Witness	Subject Of Testimony	Allegheny's Own Testimony/Evidence On Same Topic
Terrill (cont'd)	Habitat impact from air pollution effects on soils and vegetation	<ul style="list-style-type: none"> • Project emissions will not result in harmful effects on soils and vegetation or on any plant or wildlife species. (Application at B-1-58; Simpson Testimony at 6-7, 17.)
	Avian mortality from conductor collisions	<ul style="list-style-type: none"> • Project may result in bird kills from conductor collisions; however project would not result in adverse impacts on the biological wealth within the area or on any plant or wildlife species. (Application at C-4 to C-5; Simpson Testimony at 6-7, 17.)
Schmidt	Groundwater quality.	<ul style="list-style-type: none"> • Groundwater quality is reported and it is concluded that the groundwater is of suitable quality to meet project demands. (Application at B-3-12 to B-3-17; Simpson Testimony at 14-16.)